IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.6628 OF 2005

Shri Onkarsingh Avatarsingh
Gujaral and ors. : Applicants.

versus

Shri Madanlal Harichand Thapar
and Anr. : Respondents.

Mr.M.K.Kocharekar i/by Mr.A.P.Mundergi for the applicants.
Mr.Madanlal Thapar - Respondent No.1 - Party in person present.
Mr.Rajesh More, APP, for State/Respondent No.2.

CORAM : V.M.KANADE, J.
DATED : 10th February 2006.

ORAL ORDER

1. Heard learned counsel appearing for the applicants and also heard the party in person i.e. Respondent No.1 herein. This is an application filed by original accused for

quashing the process which has been issued by the Metropolitan Magistrate on a complaint filed by Respondent No.1 herein for the offences punishable under Sections 452, 354, 504, 506-II r/w 34 of the Indian Penal Code. Respondent No.1 - the complainant was residing in a Bungalow of accused. There is a civil dispute between the parties in respect of the said bungalow where Respondent No.1 claims that an agreement of sale for the said bungalow was executed in the year 1978 and, the accused, the applicants herein, claim that Respondent No.1 is illegally occupying the said premises and they have filed a suit in the Small Causes Court for evicting Respondent No.1 and his family. In the complaint which is filed by Respondent No.1 an averment is made that the applicants herein had threatened him and his family to vacate the premises. Similar allegations were made in other paragraphs regarding various incidents of similar nature.

2. The learned counsel for the applicants submits that the facts which are stated in the complaint clearly demonstrate that the complaint has been filed malafide to harass the applicants who are residing permanently at Ludhiyana. He

further submits that this complaint has been filed almost after 14 months after the alleged incident has taken place. He, therefore, submits that this is a clear cut abuse of process of court and the process, therefore, which has been issued by the Magistrate, is liable to be set aside. He submits that bailable warrant has been issued against the applicants, some of whom are the senior citizens and, therefore, would not be in a position to attend the court personally.

3. It is not possible to accept the submissions made by the learned counsel appearing for the applicants. So far as averments, which are made in the complaint, are concerned, the correctness of the said allegations cannot be decided at this stage by the High Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure. The malafides alleged by the complainant are also factual malafides and as such this court cannot go into that factual aspect of the matter at this stage. It is always open for the applicants to challenge the issuance of process before the Sessions Court. Therefore, the submissions of the learned counsel appearing for the applicants are

rejected. So far as question of grant of exemption is concerned, now in view of the recent decision of the Supreme Court, the accused can be represented before the trail court through their advocate and in the cases of summary trial and summons cases even plea of accused can be recorded through their advocate. The Supreme Court had also observed that the personal presence of the accused on each and every date is not necessary and, exemption can be granted to the accused. In view of the clear observations made by the Supreme Court, it is always open for the applicants to apply for exemption and if such an application is so made, the trial court may consider the same favourably and sympathetically considering the age of the applicants. With these observations, the criminal application is disposed of.

[V.M.KANADE,J]